

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of)
)
Closed Captioning and Video Description)
of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

MM Docket No. 95-176

To: The Commission

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Federal Communications Commission
Office of Secretary

COMMENTS OF
LINCOLN BROADCASTING COMPANY

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COMMENTS OF LINCOLN BROADCASTING COMPANY

LINCOLN BROADCASTING COMPANY ("Lincoln"), licensee of commercial, independent television broadcast station KTSF(TV), San Francisco, California, by its attorneys and pursuant to Sections 1.430 and 1.415 of the rules of the Federal Communications Commission ("FCC" or "Commission"),^{1/} hereby submits its comments in response to the *Notice of Proposed Rulemaking* ("Notice") in this proceeding.^{2/} In the *Notice*, the Commission proposes rules to implement new Section 713 of the Communications Act of 1934, as amended (the "Act"). 47 U.S.C. § 613.^{3/}

^{1/} 47 C.F.R. §§ 1.430, 1.415 (1995).

^{2/} *Closed Captioning and Video Description of Video Programming*, FCC 97-4, released January 17, 1997 (*Notice of Proposed Rulemaking* in MM Docket No. 95-176) ("Notice").

^{3/} Section 713 was added to the Act by Section 305 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

I. INTRODUCTION

Section 713 directs the Commission to promulgate regulations by August 8, 1997, to ensure to the maximum extent practicable that video programming is accessible to deaf and hearing-impaired members of the public through the provision of closed captions. *Id.* § 613(b). As demonstrated herein, Lincoln takes very seriously its responsibility to provide programming for the underserved segments of its community. Consistent with that commitment, Lincoln submits these Comments to corroborate the Commission's accurate recognition in the *Notice* of the formidable and self-defeating technical and economic burdens that a uniform captioning obligation could impose on broadcasters carrying certain specialized classes of video programming, particularly programs in foreign languages written in non-Latin-based characters.

In the *Notice*, the Commission preliminarily concludes, consonant with the provisions of Section 713(d)(1), "that, at a minimum, an exemption is appropriate for programming that is in languages which are not written using a Latin-based alphabet." *Notice* at 33 ¶ 72. Lincoln supports this conclusion and urges the Commission to include such an exemption in its rules. In addition, Lincoln urges the Commission to extend the exemption to include those foreign-language programs which, although using Latin-based alphabets, serve relatively small segments of the total television audience.

II. LINCOLN'S INTEREST IN THE PROCEEDING

KTSF(TV), San Francisco, California ("KTSF" or the "Station") is a family-owned, independent, commercial broadcast station that has been serving the San Francisco

Bay Area community on Channel 26 since 1976. Over the last two decades, KTSF has chosen to dedicate the bulk of its broadcast schedule to serving the needs and interests of traditionally underserved segments of the service area audience. As a result, KTSF has grown to become one of California's, and the nation's, largest multi-lingual television stations, broadcasting more than 100 hours of foreign-language programming each week. Approximately 100 percent of KTSF's prime-time schedule, and 64 percent of its schedule overall, is in this category. Moreover, KTSF's syndication of programming to affiliated stations in other markets such as New York and Los Angeles makes KTSF one of the leading sources of Asian-language programming in the country. Accordingly, any rule requiring the uniform captioning of foreign-language programming would have an acute impact on the Station's operations and service to the public.

Because KTSF primarily serves Northern California's Asian communities, the Station's foreign-language programming consists largely of the rich and diverse tapestry of non-Latin-based languages spoken by those populations. For example, KTSF's programming schedule features award-winning, locally-produced daily newscasts in two different Chinese dialects, Mandarin and Cantonese, as well as in Tagalog, the language spoken by many Filipinos. In addition, the Station carries a substantial amount of programming in Japanese, Korean, Vietnamese, Cambodian, and Laotian, as well as in the other non-Latin-based tongues of Hindi, Farsi, and Greek.^{4/}

^{4/} KTSF also broadcasts a modest amount of programming each week in Portuguese and Italian, and in the past, the Station has carried programming in Hebrew and Arabic.

To serve its viewers and the advertisers who wish to reach them, KTSF also maintains a full-service production facility with the capability to create original programming and commercials featuring the languages of its diverse audience. In addition, the Station receives approximately 60 hours each week (roughly 36 percent of its total weekly airtime) from international news sources such as NHK in Japan, the Korean Broadcasting Company, ATV in Hong Kong, CCCTV in China, and Geo News in Taiwan.

KTSF broadcasts closed captions in connection with some of the English-language programming that it carries,^{5/} and Lincoln has investigated the possibility of including closed captions in the Station's non-English-language programming as well. Based on this experience, Lincoln has concluded that presently-available captioning technology will not support captioning that is in the same foreign languages as the programs broadcast on KTSF, and that English-language captioning of the foreign-language audio track of its programming would be both prohibitively expensive and would provide little or no identifiable benefit for viewers of KTSF's foreign-language programming with hearing disabilities. Accordingly, Lincoln urges the Commission to exempt such programming from closed-captioning requirements, at least until such time as the technology of captioning has advanced to make such requirements feasible.

^{5/} For example, KTSF programs the California Music Channel, an English-language service, Monday through Friday between 3:00 p.m. and 5:30 p.m. This service is provided to the Station already encoded with the caption information.

III. THE COMMISSION SHOULD EXEMPT FROM ANY CAPTIONING OBLIGATION FOREIGN-LANGUAGE PROGRAMMING IN LANGUAGES USING NON-LATIN-BASED ALPHABETS

As noted above, Section 713(b) reflects the intention of Congress to achieve the captioning of video programming to the maximum extent practicable. However, Section 713(d) also manifests congressional recognition that certain circumstances will exist where mandatory captioning simply is not practicable. For those circumstances, Congress gave the Commission authority to carve out exemptions from its captioning rules. Among these circumstances, Section 713(d)(1) permits the FCC to exempt from captioning "programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming." 47 U.S.C. § 613(d)(1). In the *Notice*, the Commission tentatively proposes to exempt under this provision, at a minimum, foreign-language programming in languages not written in a Latin-based alphabet. *Notice* at 33 ¶ 72. For the reasons that follow, Lincoln strongly supports this proposal and urges that it be adopted.

First, foreign-language programming -- at least that programming in non-Latin-based languages -- should be exempt from any captioning requirement because, at present, captioning technology does not possess the capability to create captions using the characters required by the various Asian and other non-Latin-based languages such as those that comprise most of Lincoln's programming. The Commission acknowledges as much in the *Notice*, *id.*, and Lincoln's engineers have also been unable to identify any current technology which allows captioning of Chinese or other foreign-language characters feasibly or affordably.

The Commission should also exempt at least non-Latin-alphabet based foreign-language programming because, even while direct foreign-language captioning is not technically possible, other avenues of captioning such programming are equally infeasible from an economic standpoint. Lincoln has researched the possibility of captioning its foreign language programming and has determined that the costs to do so would be dramatic. For example, the total costs to caption one hour of Chinese language programming could approximate \$5750. Because technology will not support captioning in the original language of the program, the Chinese-language audio would first to be translated into English. Such translation services are available commercially at a cost of as much as \$3500.00 per hour. Thereafter, the translated program would have to be sent to an independent captioning service to have the captions added at an additional cost of \$2250 per hour.^{6/} Clearly the cost for such an undertaking would be prohibitive.

The results of these expenditures would not advance the goals of Section 713. First, the cost is so high that a captioning requirement would force discontinuation of the programming absent an exemption. Second, the process would work only for pre-produced or "library" programming; there would not be time to translate and caption KTSF's daily newscasts or other live or locally-produced programs. Third, the Commission also solicited comments concerning whether captioners exist who "are fluent in all other languages." *Notice* at 33 ¶ 72. Lincoln knows of no persons both

^{6/} This process also has technical shortcomings: for example, the need to create a copy of the program to obtain the translated audio track for captioning purposes results in a generational loss in the technical quality of the video portion of the program.

fluent in the necessary range of Asian languages and possessing the necessary stenographic skills to perform simultaneous translation and captioning on a real-time basis for the live news programming that the Station broadcasts.

Finally, the very notion of such a translated captioning regime begs the fundamental question, namely, how is the public interest served by providing English captions to hearing-impaired audience members who rely on the program because they speak either no English or English as a second language?^{7/} Plainly this cannot be a result intended by Congress.

The Commission also inquires whether "foreign language programmers generally tend to have small production budgets" *Id.* As noted above, approximately 36 percent of the foreign-language programming hours on KTSF are provided by international sources, many via satellite. The international companies that produce much of this programming -- particularly those in Hong Kong and Japan -- tend to have production budgets comparable in size to those of major U.S. producers. However, in all likelihood, such international producers would not pay for captioning because the U.S. is not a primary market for their programming and they have no separate obligation to do so. Thus, contrary to the Commission's belief that "producers generally will have the responsibility for captioning programming regardless of who has the obligation to comply with our rules," *Notice* at 6 ¶ 6, this is not likely to be the case for much foreign-language programming.

^{7/} According to information from the 1990 Census, nearly 80% of Asians in the San Francisco Bay Area speak a language other than English at home. More than 50% of those who speak an Asian language indicate that they do not speak English "very well," and fully 32% are considered "linguistically isolated."

Accordingly, the heaviest burden for captioning would fall upon the shoulders of the foreign program importers who license the material for broadcast in U.S markets. These entities often have very limited resources. Thus, even assuming that the technology would allow for it, a requirement that all such programming be captioned would likely have the effect of driving the programming out of the market altogether, thereby disserving the interests of one audience segment -- those who speak little or no English -- without any discernible benefit for the deaf or hearing-impaired audience members.

IV. CONCLUSION

FOR THE FOREGOING REASONS, Lincoln urges the Commission to adopt closed captioning rules which expressly exempt all foreign-language programming, "library" and new, live and pre-recorded, which is in languages that are not written in Latin-based characters.

Respectfully submitted,

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